

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

A.T., a minor, by and through his parent and natural guardian SHA-KEEMA TILLMAN; B.C., a minor, by and through his parent and natural guardian KRISTI COCHARDO; on behalf of themselves and all others similarly situated,

Plaintiffs,

V.

DAVID HARDER, Broome County Sheriff, in his official capacity; MARK SMOLINSKY, Jail Administrator of the Broome County Correctional Facility, in his official capacity; KEVIN MOORE, Deputy Administrator, in his official capacity; and CHENANGO VALLEY SCHOOL DISTRICT,

Defendants.

**ATTORNEY DECLARATION IN
SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

17-CV-0817 (DNH) (DEP)

JOSHUA T. COTTER, an attorney admitted to practice law in the State of New York and in the Northern District of New York, declares under penalty of perjury as follows:

1. I am an attorney duly licensed to practice law in the State of New York, and am admitted to practice in the Northern District of New York. I am employed as a Staff Attorney for Legal Services of Central New York, Inc., counsel for Plaintiffs A.T.

and B.C. in this matter. As such, I am fully familiar with the facts and circumstances of this proceeding.

2. I make this declaration in support of Plaintiffs' motion for preliminary injunction. Attached to this declaration are documents referenced in plaintiffs' memorandum of law in support of their motion. Any redactions to the attached documents were made to protect the privacy of minors pursuant to Local Rule 8.1.

3. Attached hereto as EXHIBIT 1 is a true and correct copy of the declaration of named plaintiff A.T. in support of the motion for class certification re-submitted here in support of the motion for preliminary injunction.

4. Attached hereto as EXHIBIT 2 is a true and correct copy of the declaration of named plaintiff B.C. in support of the motion for class certification re-submitted here in support of the motion for preliminary injunction.

5. Attached hereto as EXHIBIT 3 is a true and correct copy of the declaration of named plaintiff C.J. in support of the motion for class certification re-submitted here in support of the motion for preliminary injunction.

6. Attached hereto as EXHIBIT 4 is a true and correct copy of the declaration of named plaintiff D.K. in support of the motion for class certification re-submitted here in support of the motion for preliminary injunction.

7. Attached hereto as EXHIBIT 5 is a true and correct copy of the declaration of named plaintiff O.C. in support of the motion for class certification re-submitted here in support of the motion for preliminary injunction.

8. Attached hereto as EXHIBIT 6 is a true and correct copy of the declaration of named plaintiff J.V. in support of the motion for preliminary injunction.

9. Attached hereto as EXHIBIT 7 is a true and correct copy of the Broome County Sheriff's Office description of the Corrections Department, available at <http://broome.ny.us/sheriff/corrections> (last visited December 20, 2017).

10. Attached hereto as EXHIBIT 8 is a true and correct copy of the September 2017 Inmate Handbook.

11. Attached hereto as EXHIBIT 9 is a true and correct copy of the Broome County Sheriff's Office Written Policy Statement Number II-9-F: Disciplinary Sanctions, dated February 28, 2012.

12. Attached hereto as EXHIBIT 10 is a true and correct copy of the Broome County Sheriff's Office Policy Statement Number II-9-B: Disciplinary Hearings, dated June 16, 2016.

13. Attached as EXHIBIT 11 is a true and correct copy of the Broome County Sheriff's Office Policy Statement Number II-8-A: Administrative Segregation, dated February 28, 2012.

14. Attached as EXHIBIT 12 is a true and correct copy of the Broome County Sheriff's Office Policy Statement Number No. II-9-A: Initiating Inmate Discipline, dated January 27, 2010.

15. Attached as EXHIBIT 13 is a true and correct copy of the Broome County Sheriff's Office Policy Statement Number II-9-I: Categories of Offenses, dated October 1, 2001.

16. Attached as EXHIBIT 14 is a true and correct copy of the Broome County Sheriff's Office Policy Statement Number II-6-A: Classification Records, dated October 1, 2001.

17. Attached as EXHIBIT 15 is a true and correct copy of a letter from the Broome County Sheriff's Office in response to an inquiry from Legal Services of Central New York into their policies related to detainees with disabilities.

18. Attached as EXHIBIT 16 is a true and correct copy of the Broome County Sheriff's Office Written Policy Statement Number II-28-C: Inmate Program Application, dated October 1, 2001.

19. Attached as EXHIBIT 17 is a true and correct copy of a report by the State Commission of Corrections which indicates that inmates in isolation are denied educational programming as a matter of course.

20. Attached as EXHIBIT 18 are true and correct copy of the disciplinary file of B.C.

21. Attached as EXHIBIT 19 is a true and correct copy of incident reports from April 23, 2016 and April 26, 2016 related to B.C.'s placement on suicide watch.

22. Attached as EXHIBIT 20 is a true and correct copy of the SHU restraint orders imposed on B.C.

23. Attached as EXHIBIT 21 are true and correct copy of the disciplinary file of A.T.

24. Attached as EXHIBIT 22 are true and correct copies of the SHU restraint orders imposed on A.T.

25. Attached hereto as EXHIBIT 23 is a true and correct copy of the Temporary Restraining Order issued in *Doe v Hommrich, et al.*, 3-16-cv-00799 (AAT), ECF No. 9 (M.D. Tenn. April 25, 2016).

26. Attached hereto as EXHIBIT 24 is a true and correct copy of the DOJ statement titled: FACT SHEET: Department of Justice Review of Solitary Confinement (Jan. 25, 2016),
<https://obamawhitehouse.archives.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement>

27. Attached hereto as EXHIBIT 25 is a true and correct copy of the United Nations Convention on the Rights of the Child, Forty-fourth Session, General Comment No. 10 titled *Children's Rights in Juvenile Justice* (2007),
<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

28. Attached hereto as EXHIBIT 26 is a true and correct copy of the United Nations General Assembly, Seventieth Session, Agenda Item 106 titled *United Nations Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules) (Dec. 2015) <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>

29. Attached hereto as EXHIBIT 27 is a true and correct copy of Natalie J. Kraner et al., Lowenstein Sandler LLP & Lowenstein Center for the Public Interest, *51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems* (Oct. 2015),
<https://www.lowenstein.com/files/upload/51-jurisdiction%20survey%20of%20juvenile%20solitary%20confinement%20rules.pdf>.

30. Attached hereto as EXHIBIT 28 is a true and correct copy of the New York State Office of the Governor press release titled *Office of Governor Andrew Cuomo, Governor Cuomo Announces Dramatic Reform in Use of Special Housing for Inmate Discipline*, (Dec. 16, 2015)

<https://www.governor.ny.gov/news/governor-cuomo-announces-dramatic-reform-use-special-housing-inmate-discipline>

31. Attached hereto as EXHIBIT 29 is a true and correct copy of the North Carolina Department of Public Safety press release titled *State Prison System Announces End to Solitary for Inmates Under 18* (June 15, 2016),

<https://www.ncdps.gov/press-release/state-prison-systemannounces-end-solitary-confinement-inmates-under-18>.

32. Attached hereto as EXHIBIT 30 is a true and correct copy of the LAist article by Julia Wick titled “Juvenile Solitary Confinement has been Banned in L.A. County” May 3, 2016, http://laist.com/2016/05/03/juvenile_solitary.php.

33. Attached hereto as EXHIBIT 31 is a true and correct copy of the City of New York press release titled “De Blasio Administration Ends Use of Punitive Segregation for Adolescent Inmates on Rikers Island” (Dec 17, 2014), <http://www1.nyc.gov/office-of-the-mayor/news/566-14/de-blasio-administration-ends-use-punitive-segregation-adolescent-inmates-rikers-island#/0> .

34. Attached hereto as EXHIBIT 32 is a true and correct copy of the State of New York press release titled “Governor Cuomo Signs Legislation Raising the Age of Criminal Responsibility to 18-years-old in New York” (April 10, 2017), <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-raising-age-criminal-responsibility-18-years-old-new-york> .

35. Attached hereto as EXHIBIT 33 is a true and correct copy of the American Academy of Child and Adolescent Psychiatry Juvenile Justice Reform Committee report titled *Solitary Confinement of Juvenile Offenders* (April 2012),

http://www.aacap.org/aacap/policy_statements/2012/solitary_confinement_of_juvenile_offenders.aspx.

36. Attached hereto as EXHIBIT 34 is a true and correct copy of the American Medical Association report titled *AMA Adopts New Policies to Improve Health of Nation at Interim Meeting* (Nov. 11, 2014),

<http://www.pressreleasepoint.com/ama-adopts-new-policies-improve-health-nation-interim-meeting>

37. Attached hereto as EXHIBIT 35 is a true and correct copy of the American Public Health Association policy statement titled “Solitary Confinement as a Public Health Issue” (July 2014),

<https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/14/13/30/solitary-confinement-as-a-public-health-issue>

38. Attached hereto as EXHIBIT 36 is a true and correct copy of the National Commission on Correctional Health Care report titled *Solitary Confinement (Isolation)* (April 2016) <http://www.ncchc.org/solitary-confinement>.

39. Attached as EXHIBIT 37 is a true and correct copy of the findings letter of the Department of Justice following the investigation of the Pennsylvania State Correctional Facility at Cresson available at:

https://www.justice.gov/sites/default/files/crt/legacy/2013/06/03/cresson_findings_5-31-13.pdf

40. Attached as EXHIBIT 38 is a true and correct copy of the Statement of Interest of the United States of America submitted in *V.W. v. Conway*, No.

9:16-CV-01150, <https://www.justice.gov/opa/file/922386/download>.

41. Attached as EXHIBIT 39 is a true and correct copy of the New York Times Article, "Upstate County Jails are challenged for Sending Juveniles to Solitary" dated July 31, 2017. Available at:<https://www.nytimes.com/2017/07/31/nyregion/upstate-ny-county-jails-juveniles-solitary-confinement.html>

42. Attached as EXHIBIT 40 is the Individualized Educational Plan and Psychological Evaluation for named plaintiff B.C.

43. Attached as EXHIBIT 41 is the Individualized Educational Plan and Psychological Evaluation for A.T.

44. Attached as EXHIBIT 42 is a true and correct copy of the Broome County Sheriff's Office Written Policy Statement Number III-7-I: Restraints, dated October 1, 2001.

45. Attached as EXHIBIT 43 is the Declaration of Jami Waldron submitted in support of Plaintiffs' motion for Class Certification dated January 3, 2018.

46. Attached as EXHIBIT 44 are the State Commission on Corrections' Monthly Inmate Population Statistics for Broome County Correctional Facility.

47. Attached as EXHIBIT 45 are excerpts from the Medical Records of A.T. from the Broome County Correctional Facility. These records are referenced as Ex. 45 in the memorandum but filed under separate cover.

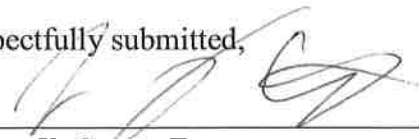
48. Attached as EXHIBIT 46 are excerpts from the Medical Records of B.C. from the Broome County Correctional Facility. These records are referenced as Ex. 46 in the memorandum but filed under separate cover.

49. Attached as EXHIBIT 47 is a true and correct copy of the National Commission on Correctional Health Care Position Statement of tiled Prevention of Juvenile Suicide in Correctional Settings (October 2012), <https://www.ncchc.org/prevention-of-juvenile-suicide-in-correctional-settings>

50. No prior application for the relief requested herein has been made to this, or any other Court.

Dated: February 5, 2018
Syracuse, New York

Respectfully submitted,



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